2018 IL App (4th) 160712-U

NO. 4-16-0712

FILED
October 16, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DEMARIO TRENDELL GOODALL, Defendant-Appellant.	))))))))	Appeal from the Circuit Court of McLean County No. 16CF530 Honorable John Casey Costigan, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Holder White and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed defendant's conviction and sentence, finding the State's evidence was sufficient to prove him guilty of aggravated battery.

¶ 2 In August 2016, a jury found defendant, Demario Trendell Goodall, guilty of one count of aggravated battery on a public way. The trial court sentenced him to two years in prison.

¶ 3 On appeal, defendant argues the State failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In May 2016, the State charged defendant by information with two counts of aggravated battery (counts I and II) (720 ILCS 5/12-3.05(d)(4) (West 2016)). In count I, the State alleged defendant, in committing a battery, knowingly made physical contact of an insulting or provoking nature with Bloomington police officer Benjamin Smith, in that he struck

Smith in the face, knowing Smith to be a peace officer engaged in the execution of his official duties of maintaining the public peace. In count II, the State alleged defendant, in committing the battery, knowingly caused harm to Smith by striking him in the face. In June 2016, the State charged defendant with a third count of aggravated battery (count III) (720 ILCS 5/12-3.05(c) (West 2016)), alleging he knowingly made physical contact of an insulting or provoking nature with Smith by striking him in the face while defendant was on or about a public way. Defendant pleaded not guilty.

¶ 6 In August 2016, defendant's jury trial commenced. Prior to jury selection, the State moved to dismiss count II and proceeded to trial on counts I and III. Bloomington police sergeant Kiel Nowers testified he was on patrol in the early morning hours of May 13, 2016, in downtown Bloomington. After finishing writing an ordinance violation, Nowers heard shouting and then saw a group of 15 people on the sidewalk in front of Pub America. A fight began, and Nowers "was right in the middle" trying to separate people. The fight escalated with "multiple people throwing punches." Nowers called for backup, and 10 officers arrived. Two people were quickly arrested, but fighting continued to flare-up. After finally separating the combatants, Nowers remained on the scene and was told a person was in custody for battering a police officer. Nowers retrieved surveillance video, which was admitted without objection. On cross-examination, Nowers stated he did not see Officer Smith get punched.

¶ 7 The surveillance video shows Officer Smith standing in the street and watching a crowd of people on the sidewalk. A man and a woman exit an establishment and begin walking down the sidewalk. It appears words are exchanged between the man and others. Officer Smith begins to make his way toward the sidewalk and encounters the group. He then pushes on three individuals in the beginning stages of a fight. The three men go to the ground, and Officer Smith

goes down on a knee. Defendant exits the establishment and runs down the sidewalk. He pushes by one individual and then enters the scrum. He makes contact with Officer Smith, goes to the ground, and Smith lands on top of him. Other officers arrive, and defendant is escorted away.

¶ 8 Marissa Trunnell testified she was the designated driver for her friend's twenty-first birthday party in the early morning hours of May 13, 2016. At approximately 1 a.m., she and her friends were standing outside of Drifter's watching with interest "the big old riot type thing going on." Trunnell was familiar with Officer Smith because her boyfriend knew him from high school. She first saw him arresting a male and then saw him "throughout pretty much the whole ordeal going on." While he was arresting a male, Trunnell saw "one male came pretty much running down the block and pretty much just nailed him in the face with his fist." At that time, Trunnell was standing in front of a vehicle, which was "pretty much less than 25 feet away from the scene" where Smith was hit.

¶ 9 Bloomington police officer Benjamin Smith testified he was on routine patrol on May 13, 2016. He responded to Sergeant Nowers' call for backup and noticed "there was a lot of commotion." Clad in his department uniform, Smith arrested one individual, handed him off to another officer, and noticed "more fights popping up." He later saw a man approach another in an aggressive manner on the sidewalk in front of Pub America. When one man put his hands on the other, Smith made his way in that direction. Shortly after encountering them, the three men fell to the ground. The two men apologized and stated there was no problem. As Smith tried to get up, he saw in his peripheral vision "someone coming at [him] at a very high rate of speed." The man struck Smith across his face and then fell to the ground. Smith identified the man as defendant. Smith positioned himself on top of defendant and tried to maintain control of one of his hands. Defendant was noncompliant, but Smith was able to place him in handcuffs.

¶ 10 After defendant was arrested, Officer Smith interviewed him at the police department. After being asked what happened, defendant stated as follows:

> "My friend was in a physical situation with another person and I jumped in to try to break it up. And the officer jumped in when I didn't see him and my hand hit his face, and he said I hit him in his face when I didn't mean to really hit him in his face. *** I barely even swung my hand. *** I was just trying to break it up and the officer is saying that I hit him in his face when I didn't try to hit him in his face I was just trying to break the situation up."

¶ 11 Defendant testified on his own behalf. He stated he saw a person he knew get "into a little incident," and he ran to "break it up." Shortly thereafter, a person came and jumped on defendant's back. Defendant stated he did not know he hit an officer.

¶ 12 On cross-examination, defendant testified he was trying to break up a fight when "the police jumped on [his] back" and he "shoved them off" him. During an interview with police, defendant stated "I didn't mean to really hit him in the face."

¶ 13 As impeachment, the State asked the trial court to inform the jury that defendant has convictions for violating an order of probation and robbery. Following closing arguments, the jury found defendant guilty on count III and not guilty on count I.

¶ 14 In September 2016, defendant filed a motion for judgment notwithstanding the verdict. He argued the State's evidence was insufficient to sustain his conviction because it failed to establish he had any intent in battering Officer Smith, and the contact did not constitute insulting or provoking contact. The trial court denied the motion. Thereafter, the court sentenced defendant to two years in prison. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Defendant argues the State failed to prove beyond a reasonable doubt that he knowingly made physical contact of an insulting or provoking nature with Smith. We disagree.

¶ 17 " 'When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " *People v. Ngo*, 388 Ill. App. 3d 1048, 1052, 904 N.E.2d 98, 102 (2008) (quoting *People v. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006)). The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81, 903 N.E.2d 388, 406 (2009). When considering the sufficiency of the State's evidence, the reviewing court does not retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8, 944 N.E.2d 319, 322 (2011). Instead, "[a] conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt." *People v. Belknap*, 2014 IL 117094, ¶ 67, 23 N.E.3d 325.

¶ 18 To sustain defendant's conviction for aggravated battery, the State must prove both the commission of a battery and "the presence of an additional factor aggravating that battery." *People v. Cherry*, 2016 IL 118728, ¶ 16, 63 N.E.3d 871. "A person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3(a) (West 2016). For the aggravated battery in this case, the State was required

to prove defendant "or the person battered is on or about a public way [or] public property." 720 ILCS 5/12-3.05(c) (West 2016).

¶ 19 Defendant first argues the State's evidence failed to prove he knowingly made contact with Smith. Instead, he contends the evidence showed he inadvertently and accidentally came into contact with Smith, he was unaware Smith was involved in the incident, and he jumped into the physical incident involving his friend only to stop a fight.

¶ 20 Accidental contact does not constitute battery. *People v. Phillips*, 392 Ill. App. 3d 243, 258, 911 N.E.2d 462, 478 (2009). Instead, the State was required to prove defendant acted knowingly, *i.e.*, that he was " 'consciously aware that his conduct [was] of such nature' that it [was] 'practically certain' to cause the result proscribed by the offense." *Phillips*, 392 Ill. App. 3d at 258, 911 N.E.2d at 478 (quoting 720 ILCS 5/4-5 (West 2004)). Where a defendant denies intent to commit the offense, the State may prove intent through circumstantial evidence. *Phillips*, 392 Ill. App. 3d at 259, 911 N.E.2d at 478. "Intent may be inferred (1) from the defendant's conduct surrounding the act and (2) from the act itself." *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 44, 955 N.E.2d 1244.

¶ 21 In the case *sub judice*, the jury had sufficient evidence before it to conclude defendant knowingly made contact with Smith. After encountering the individuals on the sidewalk, Officer Smith testified he saw "someone coming at [him] at a very high rate of speed." The man struck Smith across his face and then fell to the ground. Trunnell testified a "male came pretty much running down the block and pretty much just nailed [Smith] in the face with his fist." In his interview at the police station, defendant said his hand hit Smith's face, although he "barely even swung [his] hand" and "didn't mean to really hit him in his face."

¶ 22 Defendant claims Trunnell and Smith lacked credibility, the former because she knew Smith prior to the incident and the latter because Smith did not arrest her boyfriend for public intoxication and because he was not injured. Moreover, defendant contends his actions in coming to his friend's aid to break up a fight were, if not an accident, only reckless and not knowing or intentional. As stated, the jury, as trier of fact, has the responsibility to determine the credibility of the witnesses and the weight given to their testimony. *Jackson*, 232 Ill. 2d at 280-81, 903 N.E.2d at 406. Given the evidence, the jury could readily conclude defendant's testimony lacked credibility. Defendant claimed he was trying to break up a fight and "the police" came and "jumped on [his] back." However, the video clearly shows Smith was already in the scrum before defendant approached and on the ground when defendant made contact with him. Also, defendant's admission he hit Smith's face was in contrast to his claim at trial he never swung his arm and "didn't even touch him." After viewing the evidence in the light most favorable to the prosecution, we find a rational trier of fact could conclude beyond a reasonable doubt that defendant knowingly made contact with Smith.

¶ 23 Defendant next argues the State's evidence failed to prove his conduct resulted in contact of an insulting or provoking nature with Smith. " '[A] particular physical contact may be deemed insulting or provoking based upon the factual context in which it occurs.' " *People v. Peck*, 260 Ill. App. 3d 812, 814, 633 N.E.2d 222, 223 (1994) (quoting *People v. d'Avis*, 250 Ill. App. 3d 649, 651, 621 N.E.2d 206, 207 (1993)). This court has noted "[t]he victim does not have to testify he or she was provoked; the trier of fact can make that inference from the victim's reaction at the time." *People v. Wrencher*, 2011 IL App (4th) 080619, ¶ 55, 959 N.E.2d 693; see also *People v. Nichols*, 2012 IL App (4th) 110519, ¶ 42, 979 N.E.2d 1002 (stating the insulting

or provoking element "generally does not require proof by, for example, the victim's testimony that the contact was insulting or provoking").

¶ 24 Here, the fact Smith was not asked and did not testify that he was insulted or provoked by defendant's conduct does not undercut the jury's verdict. Instead, the jury could infer the element of insult or provocation from the nature of the act and circumstances. Officer Smith was trying to maintain order in a highly charged atmosphere, which necessitated the presence of over 10 police officers, when defendant came out of nowhere and blindsided him by hitting him in the face. Defendant was then immediately arrested. The jury could infer defendant's act of aggression was insulting or provoking, and a rational trier of fact could conclude beyond a reasonable doubt that defendant committed the offense of aggravated battery.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 27 Affirmed.